

STATUS OF GEORGIA WETLANDS POLICIES AND PROGRAMS

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INTRODUCTION

Georgia's wetlands are composed of about 500,000 acres of salt and brackish water marshlands and 4,500,000 acres of freshwater systems, including riverine wetlands and isolated inland wetlands such as Carolina bays, limesinks, and cypress and gum ponds.

Although information is available on conversion rates for coastal marshes, the information available on the conversion of freshwater wetland is sketchy. Between the mid-1950s and the mid-1970s, it is estimated that approximately 150,000 acres were converted to nonwetland uses (Kundell and Woolf, 1986). The U.S. Fish and Wildlife Service (1991) estimates that between the mid-1970s and the mid-1980s an additional 100,000 acres were lost in Georgia. Consequently, during the thirty year period from the mid-1950s to the mid-1980s, some 250,000 acres of wetlands were converted to dry land uses.

Like other states, Georgia's wetlands policies and programs are intertwined with national wetlands policies. States, however, do have flexibility to take action to address their own wetlands concerns. Although Georgia has not adopted an overall wetlands management policy, the state has taken four major wetlands actions: (1) adoption of a management program for the coastal marshes; (2) acquisition of wetlands; (3) designation of wetlands and stream corridors as "vital areas" of the state; and (4) provision of property tax incentives to protect wetlands.

STATE'S FOUR WETLANDS ACTIONS

1. Management Program:

Coastal Marsh Land Protection Act

Management of the coastal marshes is called for by the Coastal Marshlands Protection Act of 1970. This law established an administrative review process for those activities that would convert the coastal marshes to non-marshland uses. Between 1970 and 1989, this law was not substantively amended. A 1988 study of the effectiveness of this management effort found it to be working well but identified a number of amendments that would update the law and make it more effective.

Amendments. Legislation passed in 1989 addressed one problem identified by the study, that permitting the use of state owned water bottoms and marshes without a fee or compensation to the state was unconstitutional (Act 471, 1989 Session of the Georgia General Assembly).

Legislation passed during the 1992 session of the Georgia General Assembly included most of the recommendations contained in the study (Act 1250, 1992 Session of the Georgia General Assembly). Amendments included designation of the coastal marshlands as vital areas of the state (O.C.G.A. 12-5-281), recognition of the recreational value of the marshes and the public trust responsibilities of the state (O.C.G.A. 12-5-281), expansion and clarification of the definitions (O.C.G.A. 12-5-282), authorizing permits for minor modifications to the marshes to be issued by the Commissioner of the Department of Natural Resources (DNR) rather than the Coastal Marshlands Protection Committee (O.C.G.A. 12-5-283(d)), instituting a nonrefundable permit application fee (O.C.G.A. 12-5-286(b)(7)), placing the responsibility on the applicant to demonstrate that the proposed alteration to the marsh is not contrary to the public interest and that no feasible alternative site exists (O.C.G.A. 12-5-286(h)), periodic review to ensure that the permitted activity remains consistent with the permit requirements (O.C.G.A. 12-5-286(n)), identifying those actions that would normally be considered contrary to the public interest (O.C.G.A. 12-5-288), and setting forth penalties for noncompliance including the cost of restoration (O.C.G.A. 12-5-297).

It is interesting to note that these amendments passed with little opposition during a time when wetlands were under intense debate at both the state and federal levels. This is probably due to the recognition by all sides of the values of the coastal marshes.

2. Wetlands Acquisition

Wetlands acquisition has been a component of state fish and wildlife land and park land acquisition programs for several years. As of March 1990, the state owned over 57,000 acres of freshwater wetlands and managed them through the wildlife management program, public fishing areas program, and parks and recreation program. Since April 1991, additional wetlands acreage has been purchased by the state under the Governor's Preservation

2000 program. Although wetlands acreage is not identified specifically in this program, purchases include nearly 6500 acres of marshlands on Little Tybee island and 1200 acres on Cabbage island. Additional wetland acreage is included in the purchase of Buffalo Swamp, the Lighthouse Tract on Sapelo, and others (Harvey Young, Georgia DNR, personal communication, September 9, 1992). Acquisition by the state (or federal government) provides the greatest assurance that these wetlands will be protected.

3. Vital Areas Designation

Designation of wetlands as "vital areas" of the state was called for in an analysis of land use planning and control policies of Georgia and incorporated into the recommendations of the Governor's Growth Strategies Commission (Kundell et al, 1989 and Governor's Growth Strategies Commission, 1988). Subsequently, the Georgia Planning Act of 1989 developed to implement the Commission's recommendations incorporated the vital areas designation for wetlands (O.C.G.A 12-2-8). The law directs the DNR to promulgate standards for wetlands protection to be included in local land use plans. The criteria for wetlands protection have been adopted by the Board of Natural Resources (Rules of Georgia Department of Natural Resources Environmental Protection Division, 391-3-16-.03).

Wetlands Maps. Basic to wetlands protection is the determination if land considered for alteration includes wetlands. This is important both for the land owner or prospective land owner to know prior to investing dollars and for the local governments to know when developing land use and public works plans. The Georgia Planning Act directs DNR to develop wetlands maps and to make them available to local governments to use for planning purposes. These maps, produced using LANDSAT technology, have been generated and made available to the Regional Development Centers for use by local governments. With funds obtained from the U.S. Environmental Protection Agency (EPA), DNR is refining these maps to make them more accurate and usable in the planning process. Although the maps produced by DNR are not jurisdictional delineation maps, they do flag areas that may contain wetlands.

4. Property Tax Incentives

Historically, one reason for altering wetlands, either through timber harvest or conversion, has been the tax burden attached to the land. The higher the tax on the land or the timber on the land, the greater the incentive to receive a financial return from the land, resulting in the alteration or conversion of the wetland. In 1991, the Conservation Use Act (Act 592, 1991 Session of the Georgia General Assembly) was passed that instituted current use valuation and taxation of bona fide conserva-

tion use property, including wetlands. In addition to basing taxes on current use, this Act provides for the one-time ad valorem taxation of timber upon its harvest or sale. Thus, the tax incentives to harvest timber and to convert wetlands to more financially productive uses have been eliminated.

WETLANDS MANAGEMENT POLICIES: STATE'S WETLANDS CONSERVATION COMMITTEE

The State of Georgia relies on the Coastal Marshlands Protection Act to regulate saltwater wetlands but depends on the federal Clean Water Act Section 404 program to regulate alterations of freshwater wetlands.

Wetlands Delineation. A major issue associated with this program has been defining what wetlands are and delineating them for land use decision making purposes. As a result of the outcry resulting from release of the 1989 delineation manual, which greatly increased the land area defined as jurisdictional wetlands, the Georgia General Assembly created the Wetlands Conservation Study Committee during the 1991 session to analyze steps the state might take relating to wetlands management.

The study committee met throughout the interim and made several recommendations for state action (Wetlands Conservation Study Committee, 1991). It was difficult to determine the nature of wetlands actions likely to be taken at the federal level. Heavy pressure was being focused on all issues related to wetlands, and it was not clear how this debate would be resolved and how it would influence what the state might do. Consequently, the study committee did not recommend that the state take action at that time relating to delineation of wetlands.

State Assumption of 404 Program. Under consideration by Congress is the possibility of making assumption of the 404 program by states more attractive by providing financial incentives and allowing the states to regulate all wetlands. The study committee recommended that DNR consider the pros and cons of state assumption of the 404 program. DNR reported back that the "State of Georgia should pursue delegation of the Section 404 permit program once the Federal definition of wetlands is resolved and once the delegation procedures are modified to allow meaningful State delegation (Georgia DNR, 1992a)." DNR estimates that the cost of assuming the program will be in the range of \$1.5 million annually.

Mitigation Banking. The study committee also recommended DNR consider the pros and cons of mitigation banking for wetlands. DNR concluded (Georgia DNR, 1992b):

"The advantages of a wetland mitigation banking appear to outweigh the disadvantages. However, the mitigation bank

concept is not a cure-all and should be used only in accordance with the regulations and guidelines of the EPA and COE. Although mitigation banking will not be appropriate for all projects, there will definitely be some projects in Georgia for which mitigation banking is acceptable and advantageous."

Other Recommendations. Additional recommendations of the study committee included endorsement of updating the Coastal Marshlands Protection Act, urging DNR to seek grant support from EPA for wetlands management efforts, and, although the study committee did not support the state developing a wetlands classification system unless they are found to be a viable management tool, it suggested that DNR investigate them to determine how such a system might be structured for Georgia. The study committee also recommended that it be continued in 1992 but, due to lack of action at the federal level, it was not reconstituted.

CONCLUSIONS

Although the state has recognized the value of the coastal marshes and has taken steps to protect them, the state has historically done little relating to freshwater wetlands. During the past few years, however, more recognition has been given to the importance of freshwater wetlands in Georgia. By identifying both wetlands and stream corridors as vital areas of the state, mapping wetlands so that land owners and local governments will have prior knowledge as to their general location, and altering the tax structure to eliminate taxes that support alteration and conversion of wetlands, the foundation has been set to establish more meaningful wetlands management policies once the uncertainties are clarified at the federal level.

LITERATURE CITED

- Georgia DNR. "Georgia Assumption of the Section 404 Permit Program," Report submitted to the Wetlands Conservation Study Committee, June 1992a, 5 pp.
- Georgia Department of Natural Resources. "Statewide Mitigation Banking," Report submitted to the Wetlands Conservation Study Committee, June 1992b, 8 pp.
- Governor's Growth Strategies Commission. 1988. *Quality Growth Partnership: The Bridge to Georgia's Future*, Atlanta, Ga., 16 pp.
- James E. Kundell and S. Wesley Woolf. 1986. *Georgia Wetlands: Trends and Policy Options*, Carl Vinson Institute of Government, University of Georgia, Athens, GA., 112 pp.
- James E. Kundell, Janet Kealey, Robert Klant, and Linda Wilson. 1988, *Management of Georgia's Marshlands Under the Coastal Marshlands Protection Act of 1970*,

- Carl Vinson Institute of Government, University of Georgia, Athens, Ga., 34 pp.
- James E. Kundell, Richard W. Campbell, Joseph M. Heikoff, Lawrence R. Hepburn, Robert Klant, and S. Wesley Woolf. 1989, *Land-Use Policy and the Protection of Georgia's Environment*, Carl Vinson Institute of Government, University of Georgia, Athens, Ga., 160 pp.
- U.S. Fish and Wildlife Service. 1991. *Wetlands: Status and Trends in the Conterminous U.S., Mid-1970s to Mid-1980s*.
- Wetlands Conservation Study Committee. "Report of the Wetlands Conservation Study Committee, December 1991, 8 pp.